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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

UNITED STATES OF AMERICA

v.

ZACHARY BENOIT

* * * * *

* 18-cr-110-JD

* May 8, 2019

* 11:05 a.m.

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TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JOSEPH A. DiCLERICO, JR.

Appearances:

For the Government:

Helen W. Fitzgibbon, AUSA
United States Attorney's Office

For the Defendant:

Dorothy E. Graham, Esq.
Federal Defender's Office

Probation Officer:

Theresa Duncan

Court Reporter:

Liza W. Dubois, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, New Hampshire 03301
(603) 225-1442

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for
3 consideration today a sentencing hearing in criminal
4 case 18-cr-110-01-JD, United States vs. Zachary Benoit.

5 THE COURT: Good morning.

6 MS. FITZGIBBON: Good morning.

7 MS. GRAHAM: Good morning.

8 THE COURT: Ms. Graham, the Court has a
9 Presentence Investigation Report before it. Have you
10 had a chance to review that with your client?

11 MS. GRAHAM: Yes, your Honor.

12 THE COURT: Now, you had several guideline
13 issues that you would like to take up.

14 MS. GRAHAM: I have, your Honor, and --

15 THE COURT: Let me just interrupt.

16 MS. GRAHAM: Sure.

17 THE COURT: It might save you a little time.

18 As I understand it, your first issue relates
19 to the use of a computer and as I understand it, the
20 government doesn't have any objection to making that
21 adjustment.

22 MS. FITZGIBBON: No objection to that, your
23 Honor.

24 THE COURT: So the Court will do that.

25 MS. GRAHAM: Thank you.

1 THE COURT: All right.

2 MS. GRAHAM: As to the second objection, your
3 Honor, which was for the five levels for trading for --
4 for benefit or for -- in return for other pornography,
5 in reviewing my client's statement and the transcript,
6 I'm -- I withdraw my objection because I think that the
7 evidence supports that by preponderance of the evidence
8 and I would come back to that in more of a variance
9 argument in terms of how much of that pornography made
10 up the -- or what percentage of that actually made up
11 the collection.

12 So I agree that's more of a variance argument
13 at this point.

14 THE COURT: All right.

15 So with respect to the guidelines then, the
16 Court will -- in the report, line 28 or paragraph 28,
17 the Court will strike the two-level increase.

18 In paragraph 33, the adjusted offense level
19 becomes 38.

20 In paragraph 37, the total offense level
21 becomes 35.

22 Do counsel agree with that?

23 MS. GRAHAM: Yes.

24 MS. FITZGIBBON: Yes, your Honor.

25 THE COURT: And then the probation officer

1 will make the necessary changes later on in the report.

2 THE PROBATION OFFICER: Yes, your Honor.

3 THE COURT: So at offense level 35, Criminal
4 History Category I, that yields a guideline range of 168
5 to 210 months.

6 Does the government have a recommendation?

7 MS. FITZGIBBON: Yes, your Honor. And if I
8 may, before --

9 THE COURT: Yes.

10 MS. FITZGIBBON: -- we move on from the PSR --

11 THE COURT: Yes.

12 MS. FITZGIBBON: -- just to be a stickler, it
13 does not impact the guideline range at all, but I
14 notified probation and defense counsel yesterday that I
15 had overlooked -- and I apologize for the lateness --
16 just an error in number of images in paragraph 15 --

17 THE COURT: Okay.

18 MS. FITZGIBBON: -- of the PSR. The report
19 actually found that -- once all of the thousands of
20 images were reviewed, it was found that there were 299
21 still images and 418 videos identified as known.

22 And, again, this does not impact the guideline
23 range at all. I just wanted to bring that to the
24 Court's attention.

25 THE COURT: So what was that?

1 MS. FITZGIBBON: It was 299 images, 418
2 videos.

3 THE COURT: All right.

4 All right. Did you have any comment on that,
5 Ms. Graham? I'll give you a moment to digest it.

6 MS. GRAHAM: I -- I think that paragraph 16
7 discusses the extent of the images and so I -- I don't
8 think that it really makes any difference to the Court's
9 analysis.

10 THE COURT: All right.

11 MS. FITZGIBBON: Thank you, your Honor.

12 THE COURT: All right.

13 MS. FITZGIBBON: So, your Honor, with respect
14 then to the government's recommendation, the government
15 does recommend a sentence of 168 months. The
16 government's argument for this is largely set forth in
17 our sentencing memorandum.

18 As the Court is aware, this was an extensive
19 collection, an extremely large collection of child
20 pornography, including some of the worst, most violent
21 and disturbing images known to law enforcement involving
22 the horrific abuse of multiple children, including
23 babies and toddlers.

24 The defendant did not keep these images to
25 himself, but was involved, as the Court is aware, with

1 sharing and further putting these images out there into
2 the public and to -- so that he could receive more of
3 these awful images.

4 For all of the reasons, your Honor, set forth
5 in our sentencing memorandum, the government feels that
6 a sentence of 168 is the appropriate sentence in this
7 case.

8 Thank you.

9 THE COURT: Thank you.

10 Ms. Graham.

11 MS. GRAHAM: Thank you, your Honor.

12 Your Honor, part of my argument, I think, will
13 incorporate some of the arguments that I will be making
14 in terms of the conditions of supervised release, so if
15 I could address that as I'm making my sentencing
16 argument.

17 THE COURT: Yes.

18 MS. GRAHAM: The defense obtained a highly
19 respected expert to conduct an evaluation in this case
20 and Mr. Benoit was extremely forthcoming in that
21 evaluation.

22 I think that the government and probation have
23 placed great weight on an encounter that Mr. Benoit had
24 when he was approximately eight years old. On page 13
25 of Dr. Guidry's report, she states, quote: His limited

1 prepubescent sexual misconduct with his younger sister
2 when he was eight does not constitute a sexual contact
3 offense that would suggest an increased risk for future
4 contact sexual offense due to the prepubescent nature of
5 the acts.

6 Dr. Guidry goes on to say, quote: There is no
7 data to indicate that he has ever approached a child for
8 sex, has ever engaged in sex with a child as an
9 adolescent or adult, or that he appears to believe that
10 children are his emotional and/or social sexual equals.
11 As such, Dr. Guidry finds that there is limited data to
12 suggest that Mr. Benoit presents a risk of committing a
13 contact sexual offense.

14 And, notably, in her conclusion she states:
15 He presents a relatively low risk for recidivating with
16 a contact sexual offense as he does not present with
17 factors consistent with those that would indicate he
18 presents an elevated risk to commit a sexual contact
19 offense.

20 And I start off with that information, your
21 Honor, because the government presents no evidence to
22 refute that. They've had this evaluation for -- I
23 believe since September of 2018. They've not presented
24 their own expert's report or provided expert testimony
25 to this Court.

1 So, accordingly, I believe that the Court
2 should give little weight to any opinions that are not
3 based on an expert's review of Dr. Guidry's evaluation
4 or the facts in this case.

5 THE COURT: Well, the doctor does qualify that
6 statement, though, by saying that: I would opine that
7 his risk for sexual reoffense by virtue of committing an
8 online sexual offense should be considered elevated if
9 untreated, but manageable if his psychological
10 vulnerabilities are adequately addressed in treatment.

11 So the doctor qualifies that.

12 MS. GRAHAM: I think she qualifies the
13 online --

14 THE COURT: Yes.

15 MS. GRAHAM: -- potential --

16 THE COURT: Right.

17 MS. GRAHAM: -- to recidivate, not --

18 THE COURT: Yes, the online.

19 MS. GRAHAM: Yes. And I agree with that, that
20 that's what the report says --

21 THE COURT: All right.

22 MS. GRAHAM: -- and I'm just making a
23 distinction between this was not a hands-on offense, nor
24 does she suggest in her evaluation that he is a high
25 risk to commit a hands-on sexual offense. But I do

1 concur with the Court that without treatment, he poses
2 an elevated risk.

3 But I think that what's important in that
4 evaluation, and I will further discuss that, is his --
5 his response to treatment and her opinion that he will
6 likely be successful with rehabilitation.

7 Specifically as to the sentence, your Honor, I
8 think my client has had or has lived a relatively
9 sheltered life. He lived at home until the age of 24
10 when he moved out to live with his girlfriend and as a
11 result of this investigation and, of course, his own
12 actions, he's had no contact with his own child or the
13 child's mother. The child is in the sole custody of the
14 child's mother and she will get to decide if or when
15 Mr. Benoit will have contact with his child.

16 Although Mr. Benoit has not furthered his
17 education, he's maintained stable employment for most of
18 his life, specifically during pretrial supervision.

19 I think many factors support that a 60-month
20 sentence is appropriate in this case. First of all,
21 Mr. Benoit was incredibly cooperative with the
22 investigation. He insisted -- assisted in his own
23 prosecution by making admissions and telling police
24 where certain items could be found on those devices and
25 sat down for a full interview.

1 He has been compliant with federal supervision
2 and the conditions of this Court.

3 Again, as the Court has already mentioned,
4 Dr. Guidry has suggested that his risk for sexual
5 reoffense of an online sexual offense should be
6 considered elevated if untreated, but manageable if his
7 psychological vulnerabilities are adequately addressed
8 in treatment. So in the context of appropriate
9 treatment, his prognosis is positive, she explains.

10 He has a supportive family. His family has
11 continued their support knowing of this offense and what
12 the outcome is going to be, which is clearly
13 incarceration.

14 But I think it's important for the Court to
15 understand that this conduct does not appear to have
16 been motivated by pedophilia, but motivated by premature
17 exposure to pornography that was pierced with
18 prepubertal sexual acting out.

19 As I discussed in my sentencing memo, your
20 Honor, there is a widespread agreement among judges and
21 courts that the guidelines for child pornography are
22 seriously flawed. The sentencing enhancements produce a
23 sentence approaching the statutory maximum based solely
24 on characteristics that are all but inherent to a
25 crime's conviction and that approach is fundamentally

1 inconsistent with 18 U.S.C. 3553.

2 Most important -- I think the most important
3 issue other than the appropriate punishment and
4 deterrence is whether Mr. Benoit is amenable to
5 treatment so that this does not occur again and he does
6 not reoffend.

7 Dr. Guidry concluded that Mr. Benoit's
8 prognosis is positive and she wrote, quote: His
9 responses suggest an acknowledgment of important
10 problems and the perception of a need for help in
11 dealing with these problems. He reports a positive
12 attitude towards the possibility of personal change, the
13 value of therapy, and the importance of personal
14 responsibility.

15 In addition, she reports a number of other
16 strengths that are positive indications for a relatively
17 smooth treatment process and reasonably good prognosis.

18 While some incarceration obviously is
19 warranted and he has a mandatory minimum sentence, your
20 Honor, I believe that there is nothing in Mr. Benoit's
21 history or characteristics which should suggest that a
22 lengthy sentence is necessary or appropriate to achieve
23 the goals of sentencing.

24 I think the best way to determine what his
25 success will be is looking at how he has done while on

1 pretrial supervision, and he has complied with those
2 conditions.

3 I know my client would like to address the
4 Court and also his mother's here to address the Court as
5 well.

6 Would the Court like me to proceed with my
7 objections regarding the supervised release conditions
8 at this point?

9 THE COURT: Yes.

10 MS. GRAHAM: Thank you.

11 I would ask the Court to review *U.S. vs.*
12 *Pabon*, 819 Federal 3d 26 at 31, which is a 2016 case.
13 And there the Court said that similar to sex offender
14 treatment conditions, associational conditions may be
15 proper where the defense, one, has -- where the
16 defendant, rather, has recently committed a sexual
17 offense against a minor; or where the intervening time
18 between a prior sex offense and the present conviction
19 is marked by substantial criminal activity; or where the
20 defendant's conduct otherwise indicates an enhanced risk
21 to minors.

22 And I would suggest that those factors do not
23 exist in this case and, therefore, the conditions are
24 not reasonable or based in fact.

25 Regarding the restriction outlined in

1 condition number 1, which would restrict his contact
2 with his own children and also contact with other
3 children, my client has a -- one child, a four-year-old,
4 who's in the custody of his mother, but Mr. Benoit is 28
5 years old and he may in the future get married and have
6 more children. To say that he cannot have any contact
7 with children without permission from probation is not
8 reasonably related to this offense and imposes a greater
9 deprivation of liberty than is necessary. It would
10 potentially interfere with his ability and right to
11 raise his own children.

12 Again, I say that this is not reasonably
13 related because this is not a hands-on offense and
14 there's no evidence that Benoit abused his child or that
15 he poses a threat to his own child or future children.
16 In fact, the stepchild that was in the home was
17 interviewed by a child advocacy center and they
18 concluded that that child had not been subjected to any
19 assault or inappropriate behavior.

20 By allowing probation to decide whether to
21 permit contact between a parent and a child may seem
22 reasonable as a middle ground, but I think that, A,
23 there has to be some justification for imposing such a
24 condition and it also places a tremendous amount of
25 power in the probation officer's hands to determine

1 whether my client would have and should have contact
2 with his own children.

3 A restriction of any contact with anyone under
4 the age of 18 is highly restrictive and I would ask the
5 Court to amend that condition by allowing contact if
6 supervised by an adult who is aware of his conviction
7 and his status. Why that's restrictive is because
8 basically that would prevent my client from maybe
9 attending any family event where children may be. If
10 there is some supervision by an adult who's aware of his
11 conviction and status, then that would allow him to
12 share and to enjoy family and family events.

13 THE COURT: But, you know, we're at the point
14 where he hasn't undergone any treatment of any kind.

15 MS. GRAHAM: I -- yes, and --

16 THE COURT: And so there's a -- there's a
17 risk, just based on the -- on the facts of this case.
18 And this is a condition that's not cast in concrete. It
19 can be adapted and modified as time goes on based on --
20 on what develops in terms of his -- of his treatment and
21 his engaging in the appropriate programs.

22 MS. GRAHAM: I understand, your Honor.

23 I think the -- the other restriction was the
24 total ban on going to parks, museums, or libraries.
25 Well, I don't think that probation specifically says

1 libraries, but I'm using a library as an example of not
2 being allowed to go to a public place where children may
3 be, because they're at the library reading books, really
4 infringes on my client's ability to have freedom of
5 movement and freedom to enjoy public spaces.

6 THE COURT: As I understand it, counsel would
7 not disagree with adding a phrase to that requirement,
8 "without prior permission of the probation officer"?

9 MS. FITZGIBBON: That's correct, your Honor.
10 I would have no objection to adding that.

11 THE COURT: So any -- and, again, just so
12 you -- we're looking a number of years away --

13 MS. GRAHAM: Yes.

14 THE COURT: -- and the need for treatment and
15 we have to have some assessment as to how he's
16 responding to that treatment before we simply allow him
17 to go to parks and schools and playgrounds.

18 MS. GRAHAM: I guess, your Honor, I just want
19 to distinguish the -- Dr. Guidry's evaluation as to
20 contact offenses versus his -- his risk of reoffending
21 online. And I think that there is no evidence, at least
22 before the Court, I think, that he is inclined to engage
23 in any kind of sexual hands-on offense. And I just
24 wanted to clarify that for the -- my position.

25 THE COURT: All right.

1 MS. GRAHAM: I think the final request, your
2 Honor, is to allow my client to use a computer and to
3 redefine the language proposed by probation.

4 We would ask that the Court allow him to use
5 the -- to use the Internet and computers for -- to
6 access the Internet so long as it was not for any images
7 or material as defined at 18 U.S.C. 2256.

8 In this day and age, most people get their
9 news online; they can take classes online; they do job
10 searches. And I understand that the provision would
11 allow for permission by probation, but I think that
12 that's very restrictive and highly burdensome. And if
13 the language could be switched to say he can have access
14 so long as it's not for unlawful or illegal purposes or
15 as defined in 18 U.S.C. 2256, that would alleviate any
16 concern that my client would be engaging in any online
17 activity that's not prohibited -- that's not
18 permissible.

19 THE COURT: What's the government's response
20 to that?

21 MS. FITZGIBBON: The government would object
22 to that, your Honor. Of all conditions, it would seem
23 the restriction on Internet is appropriate in this case,
24 given the fact that the defendant's offense of
25 conviction is Internet-related and he used the Internet

1 to -- to gather so much illegal contraband.

2 Secondly, your Honor, as you've said, when the
3 defendant goes through sex offender treatment, there's
4 going to be all sorts of things that he's most likely
5 not allowed to access on the Internet, not just illegal
6 things, not just things in 2256, but, for instance,
7 gaming, chat rooms. There are legal sites that have
8 photos of children that while not sexually explicit are
9 arousing to a person in sex offender treatment and I'm
10 sure the counselors would not want him in those.

11 So, again, your Honor, there will be software
12 to ensure that he's not engaged in illegal activity, but
13 there will also be -- not just illegal stuff; there will
14 be, I'm sure, Internet activities that citizens are
15 allowed to participate in that under his supervised
16 release and with his counseling will not -- he will be
17 prohibited from.

18 So, again, I think it's very important that
19 the probation officer is the one to sit with him -- and
20 of course Internet will have to be used for job searches
21 and news and that sort of thing, but it is the U.S.
22 Probation Office that should be setting the parameters
23 of what is permissible Internet use and then what is not
24 permissible for him as a person under supervised release
25 conditions.

1 THE COURT: The *Hinkel* case, Ms. Graham, that
2 you quoted, and as you state in your memo, the Court
3 noted that broad -- broad restrictions were upheld where
4 the defendant used the Internet in the underlying
5 offense. That's clearly the situation here.

6 Secondly, the defendant had a history of
7 improperly using the Internet to engage in illegal
8 conduct, clearly the situation here, over a period of
9 five years of lengthy involvement.

10 And, three, particular and identifiable
11 characteristics of the defendant suggested that such a
12 restriction was warranted. The length of time, the
13 nature of the images and videos that were assembled over
14 the five years, clearly supports a restriction.

15 And, once again, as he engages in sexual
16 offender treatment, he will be guided by -- by the
17 counselors as to what he can and cannot do when it comes
18 to the Internet, but certainly at this point in time,
19 there's -- there's sufficient justification for that --
20 that restriction. And it's not -- it's not an absolute
21 prohibition. It's simply requiring appropriate
22 oversight prior to his engaging in Internet use.

23 MS. GRAHAM: Understood, your Honor.

24 THE COURT: All right.

25 MS. GRAHAM: I really don't want to leave the

1 argument having, you know, teased out very minute
2 details because I think that that might benefit my
3 client in the sense that I -- I really would leave my
4 presentation -- would like to leave my presentation with
5 the Court understanding that my client has been
6 compliant; that he has been cooperative; that he has
7 been remorseful. And I think that the evaluation taken
8 as a whole really emphasizes that my client is in a
9 position to be successful on supervised release if he
10 follows the treatment that will be provided to him.

11 THE COURT: The -- as we know, using the
12 number of images to make an adjustment under the
13 guidelines has been a very controversial issue with
14 courts. The courts have been concerned about -- about
15 how that is used and how it skews the guideline.

16 The other issue is in terms of the number of
17 images that were traded, do you agree -- does the
18 government agree it was a small number overall,
19 relatively speaking, with --

20 MS. FITZGIBBON: That we know of, your Honor.

21 THE COURT: Yeah.

22 MS. FITZGIBBON: Because the undercover was
23 the one who was receiving it and then stopped. But the
24 extent to which it went to other people is still
25 unclear. We know of some.

1 THE COURT: Because, I mean, that resulted in
2 a five-level enhancement, which is --

3 MS. FITZGIBBON: Uh-huh. Yes, your Honor.

4 THE COURT: -- a significant enhancement, but
5 it appears from what I read here that -- that the -- the
6 number of images was -- what, was about 50, as I
7 recall --

8 MS. GRAHAM: I believe the evidence --

9 THE COURT: -- was it?

10 MS. GRAHAM: -- that was provided in
11 discovery, which included my client's statement, was
12 that he believed either traded 50 or 100. It was in
13 that --

14 THE COURT: Yeah.

15 MS. GRAHAM: -- that amount.

16 THE COURT: So those are factors that can be
17 weighed in determining whether a variance is justified.

18 MS. GRAHAM: Yes, your Honor.

19 And I would just -- I don't think I need to
20 restate the -- the further arguments made in my
21 sentencing memorandum, but specifically just that nearly
22 every child pornography case like this that comes before
23 the Court is going to be at the maximum end and that
24 just seems not to support, really, the goals of
25 sentencing.

1 My client has -- he's in class I, Criminal
2 History I, and I think that that's important as well to
3 emphasize to the Court.

4 If I could now ask my client's mother to come
5 up and address the Court.

6 THE COURT: Yes.

7 Good morning, Ms. Benoit.

8 MRS. BENOIT: Good morning, your Honor.

9 My name's Heather Benoit. I am Zachary's
10 mother and I am here and have been with him in support
11 and ask for some leniency and the minimum sentencing for
12 the crimes that he has pled guilty to.

13 I am not in any way trying to minimize what he
14 has done. I am well aware that he should and does have
15 consequences that he must face for his actions.

16 Up until his arrest in 2017, I have never
17 known him -- never had any problems as far as any
18 serious trouble, getting in trouble for anything other
19 than some traffic tickets. Other than that, he's always
20 been responsible. He's always been a hard worker and
21 helped around -- before he was old enough to actually
22 have a job -- helped at his great uncle's auto garage
23 when he was about 12 years old to start earning pocket
24 money.

25 When he was 15, I was diagnosed with breast

1 cancer. During that time, my husband was on the road as
2 a truck driver and Zachary took care of his younger
3 brother, who was eight at the time, the house, myself,
4 and also worked part time. I could not have ever gotten
5 through any of that without him and without everything
6 that he had done.

7 I want to assure the Court that Zachary
8 has his father's and my full support during his
9 incarceration as well as other family and friends. And
10 afterward we are fully prepared to have him live with
11 us, which he has been doing since his arrest, and we
12 will encourage and stand by him as he does all that he
13 can to make amends for his actions. I wholeheartedly
14 believe that Zachary is more than willing to do all that
15 he is capable of in order to reform.

16 Thank you for your time.

17 THE COURT: Thank you, Ms. Benoit.

18 MS. GRAHAM: Your Honor, my client --

19 THE COURT: Mr. Benoit, yes.

20 THE DEFENDANT: Your Honor, I am deeply
21 regretful and ashamed of my actions that have led me to
22 this day. Not only am I sorry for my behavior, but for
23 the harm that I have caused to all that have been
24 affected by my crime. By my actions I have caused harm
25 to all the victims by allowing these videos to continue

1 to circulate by my hand, which they did not deserve.

2 In all other aspects of my life, I have tried
3 to do my best and be a considerate and respectful
4 person. I know that I have disappointed my family,
5 friends, myself -- and myself by making these offensive
6 choices and want to better myself by receiving --
7 receiving counseling and furthering my education while
8 incarcerated, after -- after my eventual release.

9 My goal is to earn back the trust of my family
10 and my friends, society, by working hard and never
11 repeating the actions that led me here today.

12 Thank you.

13 THE COURT: Thank you.

14 Am I correct that counsel has agreed on the
15 restitution amount?

16 MS. FITZGIBBON: Yes, your Honor. Continuing
17 right up until yesterday, both Attorney Graham and
18 myself were talking to the victims' attorneys and
19 Attorney Graham has entered into agreements of what
20 would be acceptable and I would ask the Court to also
21 adopt that and order the restitution. I believe she's
22 entered into agreements for \$1,000 for each victim and
23 there are a total of nine victims.

24 MS. GRAHAM: That's my understanding.

25 THE COURT: Five, six, seven?

1 MS. GRAHAM: There's only seven that's listed
2 in the PSR because we had not yet heard back from the
3 attorney on one of the -- or -- the attorney who
4 represented two other victims. It would be a total of
5 nine.

6 THE COURT: All right. And what are their
7 names?

8 MS. FITZGIBBON: So, your Honor, one involves
9 three victims in a series, so I can give you the -- the
10 series name was Sweet Sugar. Those victims are Pia,
11 P-i-a, Ava, and Mya, M-y-a.

12 THE COURT: Well, those are already listed
13 here.

14 MS. FITZGIBBON: Oh, I'm sorry.

15 MS. GRAHAM: Those are not -- I'm sorry. If I
16 could just have a moment.

17 MS. FITZGIBBON: If we could set that one
18 aside for a minute, your Honor. I know I have the other
19 ones.

20 There is one called Tara, T-a-r-a.

21 THE COURT: That's already here.

22 MS. FITZGIBBON: Right.

23 MS. GRAHAM: There's Maureen, who's in the
24 Lighthouse series.

25 MS. FITZGIBBON: Uh-huh.

1 MS. GRAHAM: And Sarah, who's in the
2 Marineland series.

3 THE COURT: What was that name? That isn't --
4 Sarah?

5 MS. GRAHAM: So the first one, your Honor,
6 is -- Maureen's already included.

7 MS. FITZGIBBON: Okay.

8 MS. GRAHAM: Sarah, who is in the Marineland 1
9 series -- so Marine, M-a-r-i-n-e, land -- and Lily, who
10 is in the Vickie series.

11 THE COURT: All right. And the Court has
12 already approved the order of forfeiture which is
13 pursuant to the joint motion filed by counsel.

14 MS. FITZGIBBON: Thank you, your Honor.

15 THE COURT: With respect to the objections to
16 the supervised release conditions, the Court has
17 considered that they are appropriate because they --
18 they are reasonably related to the Section 3553(a)
19 factors; they do not involve any greater deprivation of
20 liberty than is necessary; and they're consistent with
21 the policy statements issued by the Sentencing
22 Commission under the facts of this case, which the Court
23 has already reviewed during its discussion with counsel.

24 The Court will -- with respect to
25 recommendation number 6, the Court will add the phrase

1 "without prior permission of the probation officer."
2 You must not go to or remain at any place where you know
3 children under the age of 18 are likely to be, including
4 parks, schools, playgrounds, and child care facilities,
5 without prior permission of the probation officer.

6 Mr. Benoit, please stand. The Court will read
7 the sentence and if either counsel has a legal
8 objection, you can tell me what that is when I'm
9 finished.

10 Pursuant to the Sentencing Reform Act of 1984,
11 it is the judgment of the Court that the defendant,
12 Zachary Benoit, is hereby committed to the custody of
13 the Bureau of Prisons to be imprisoned for a term of 156
14 months.

15 The Court recommends that the defendant be
16 assigned to an appropriate sex offender treatment
17 program while incarcerated.

18 Upon release from imprisonment, the defendant
19 shall be placed on supervised release for a term of five
20 years. Within 72 hours of release from the custody of
21 the Bureau of Prisons, the defendant shall report in
22 person to the probation office in the district to which
23 he is released.

24 While under supervision, he shall comply with
25 the standard conditions that have been adopted by this

1 Court and shall comply with the mandatory and proposed
2 special conditions attached to the presentence report as
3 amended by the Court.

4 The Court finds that the defendant does not
5 have the ability to pay a fine and waives the fine in
6 this case.

7 The Court finds that the following victims
8 have suffered injuries compensable under the Victim and
9 Witness Protection Act, Mandatory Restitution Act,
10 Violence Against Women Act, Crime Victims' Rights Act,
11 in the amounts indicated: Jenny, \$1,000; Jessica,
12 \$1,000; Pia, \$1,000; Ava, \$1,000; Mya, \$1,000; Maureen,
13 \$1,000; Tara, \$1,000; Sarah, \$1,000; Lily, \$1,000. Any
14 payment that is not paid in full shall be divided
15 proportionally among the persons named.

16 Payments toward the criminal monetary
17 penalties are ordered to begin immediately. Within 30
18 days of commencement of supervision, payments shall be
19 made in equal monthly installments of \$100 during the
20 period of supervision and thereafter.

21 Upon commencement of supervision, the
22 probation officer shall review the defendant's financial
23 circumstances and, if necessary, recommend a revised
24 payment schedule on any outstanding balance for approval
25 by the Court.

1 It is ordered that the defendant shall pay to
2 the United States a special assessment of \$200, due in
3 full immediately.

4 The Court finds that the defendant does not
5 have the ability to pay the Justice for Victims of
6 Trafficking Act assessment.

7 The order of forfeiture that has been entered
8 shall be made part of the sentence in this case and
9 included in the judgment.

10 The defendant is remanded to the custody of
11 the United States Marshal.

12 Does the government have any legal objection
13 to this sentence?

14 MS. FITZGIBBON: No legal objections, your
15 Honor, but if I could just ask -- sometimes the names of
16 series and victims get a little confused --

17 THE COURT: Yeah.

18 MS. FITZGIBBON: -- and when I talked to
19 Attorney Hepburn, Lily and Vickie might be interchanged.
20 If I could just ask the Court to after Lily put Vickie
21 Series, because that is the agreement that we were
22 talking about. So --

23 THE COURT: So instead of Lily, put Vickie
24 Series?

25 MS. FITZGIBBON: Yes, your Honor. That's who

1 Attorney Hepburn represents and I spoke with --

2 THE COURT: Do you agree with that,

3 Ms. Graham?

4 MS. GRAHAM: That's fine.

5 THE COURT: Is that satisfactory?

6 It's my obligation to inform you, Mr. Benoit,
7 that to the extent that there are any issues that can be
8 appealed, you do have the right to appeal this sentence
9 to the First Circuit Court of Appeals in Boston. That
10 appeal must be taken within ten days of when judgment is
11 entered and if you cannot afford the costs of an appeal
12 or an attorney on appeal, then those will be provided
13 for you.

14 In imposing this sentence, the Court has
15 considered the government's recommendation of 168 months
16 and the defendant's recommendation of 60 months. The
17 Court has considered the advisory guideline range and
18 the statutory factors and has imposed this sentence for
19 the following reasons:

20 One, transportation and possession of child
21 pornography are serious offenses which involve the
22 victimization and revictimization of children.
23 Therefore, an appropriate period of incarceration is
24 necessary, taking into account the particular facts of
25 this case.

1 Two, some of the material in this case
2 involved very young children and extremely sadistic
3 conduct, both of which are aggravating factors.

4 Three, using the number of images to make an
5 adjustment in the guidelines has been found by many
6 courts to be problematic. The files which were traded
7 and which resulted in a five-level enhancement in this
8 case represent a small percentage of all of the images
9 found on the defendant's computer. The Court has taken
10 these two factors into consideration in determining a
11 reasonable variance.

12 Four, the defendant has been engaged in this
13 conduct for approximately five years. He became fixated
14 on child pornography; however, there's no indication
15 that during this time he had any contact sexual offense.

16 Five, the defendant was sexually abused as a
17 child and he sexually abused his sister.

18 He has no prior criminal record, has had a
19 good work history, has a substance abuse history that is
20 mainly comprised of marijuana use, and he has been
21 diagnosed with dysthymic disorder.

22 He has cooperated with law enforcement from
23 the beginning of the investigation. He has been
24 compliant with conditions of his release and he has
25 strong family support.

1 Five, the defendant underwent a psychosexual
2 evaluation performed by Dr. Laurie Guidry. Dr. Guidry
3 concluded that the defendant is currently best
4 understood as presenting a relatively low risk of
5 recidivating with a contact offense as he does not
6 present the factors consistent with those that would
7 indicate he represents an elevated risk to commit a
8 contact offense. The doctor further concluded that the
9 defendant's risk of sexual reoffense by virtue of
10 committing an online sexual offense should be considered
11 elevated if untreated, but manageable if his
12 psychological vulnerabilities are adequately addressed
13 in treatment.

14 Dr. Guidry found that the defendant does not
15 present with an antisocial personality disorder. She
16 recommends treatment and the Court has recommended
17 treatment.

18 Restitution is required and the Court has
19 accepted counsel's recommendations with respect to
20 restitution.

21 And, lastly, the sentence imposed is
22 sufficient, but not more than necessary, to punish the
23 defendant for this offense, to deter him and others from
24 committing similar offenses, to promote respect for the
25 law, to promote -- to protect society, and to take into

1 account the defendant's individual characteristics.

2 Are there any other issues that counsel would
3 like to take up?

4 MS. FITZGIBBON: No, thank you. Your Honor.

5 MS. GRAHAM: May I have one moment, your
6 Honor?

7 THE COURT: Yes.

8 MS. GRAHAM: Your Honor, the one request I
9 have is for the Court to make a recommendation to the
10 Bureau of Prisons to place him at a facility closest to
11 New Hampshire, where his family support is.

12 THE COURT: All right. The Court will add
13 that recommendation to the -- the Court recommends to
14 the Bureau of Prisons that the defendant be assigned to
15 a facility either in New Hampshire or as close to
16 New Hampshire as possible so that he can be close to his
17 family.

18 MS. GRAHAM: Thank you.

19 THE PROBATION OFFICER: Your Honor, the
20 probation officer would like to modify paragraph 65 to
21 change the offense level as well as the --

22 THE COURT: I can't hear you. Would you
23 please speak up?

24 THE PROBATION OFFICER: I'd like to change
25 paragraph 65 to change the total offense level to 35 and

1 also the guideline imprisonment range, which would go
2 with the other paragraphs earlier.

3 THE COURT: Yes. Well, I indicated earlier
4 that the -- you were to make changes in the report
5 consistent with the Court's finding.

6 THE PROBATION OFFICER: Thank you, your Honor.

7 THE COURT: Yes.

8 We are waiting for the marshal.

9 The defendant has been remanded to the custody
10 of the United States Marshal.

11 Court will be in recess.

12 (Proceedings concluded at 11:57 a.m.)

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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 5/22/19

Liza W. Dubois
Liza Dubois, RMR, CRR
Licensed Court Reporter No. 104
State of New Hampshire